

SMOKING

- **Evolution of Smoking Laws in NC**
- **Smoking Prohibitions: 2007-2009**
- **Smoking Regulations: 2010 – Present**

Contributing Sources: Jill Moore and Aimee Wall – School of Government

Evolution Smoking Laws in NC

- **1993: Smoking Law required state and LG's to allow smoking in government buildings**
- **Over time smoking ban incrementally amended to allow local regulation in limited number of locations (i.e. Dept. of Social Service)**
- **2006: Tide starts to turn-US Surgeon General:**
THERE IS NO RISK FREE LEVEL OF EXPOSURE TO 2ND HAND SMOKE

Smoking Prohibitions: 2007-2009

- **2007: Smoking Prohibited in state government buildings**
- **LG's allowed right to regulate smoking in LG buildings**
- **Local Boards of Education allowed right to adopt policies prohibiting tobacco use**
- **2008 – Smoking Prohibited in State vehicles**
- **LG allowed right to regulate smoking in LG vehicles**

Smoking: 2010 to present

- **January 2, 2010 – 2009 Law went into effect that expanded smoking prohibitions & LG authority:**
 - a. Smoking prohibited in restaurants, bars and lodging establishments that prepare and serve food and drink**
 - b. LG allowed to regulate smoking on LG grounds and in public places**

LG SMOKING PROHIBITIONS

Pre -2010

- **Buildings owned, leased as lessor, or area leased as lessee and occupied by the LG.**
- **Buildings and grounds (up to 50ft) of local health depts. and dept of social services**
- **Any place on a public transportation vehicle owned or leased by LG and used by the public; and**
- **LG Vehicles**

2010 - Current

- **Expanded Authority**
 - 1. LG grounds – all unenclosed areas owned, leased or occupied by the LG.**
 - 2. Public Places – an enclosed area to which the public is invited or in which the public is permitted**

SOME EXCEPTIONS

- **Private residence which is not a child care facility or long term care facility**
- **Private vehicle as defined by state law**
- **Tobacco Shop as defined by state law**
- **Private club as defined by state law**
- **Motion picture, television, theater, or other live production site as outlined by state law**

ENFORCEMENT:

Depends on who is the violator

- 1. Smoker: Notification required and then issued an infraction by LEO w/ fine no more than \$50: Smoker cannot be assessed court costs**
- 2. Manager of Facility-Local Health Director can issue up to \$200 administrative penalty only after written notice**
- 3. No person can be charged with a Misdemeanor for violating the prohibition on smoking in restaurants, bars or lodging establishments.**
- 4. Injunction can be used as an enforcement tool for managers who refuse to comply with statewide law and choose to pay the \$200 penalty**

Authority to Regulate E-Cigarettes

- 1. No authority under Smoking Regulations-Chapter 130A:**
 - a. only applies to lighted cigarettes-smoking defined as the use or possession of a lighted tobacco product**
 - b. e-cigarettes – not lighted**

- 2. Police Authority: (160A-174): LG authorized to define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety or welfare of citizens**
 - a. No pre-emption-uniform system of regulation limited to sale, distribution, display or promotion of products to persons under age of 18 years**

REVIEW OF REGULATORY AUTHORITY

- **King v. Town of Chapel Hill – Court considered validity of 2 local ordinances**
 - a. Regulating vehicle towing**
 - b. Banning use of mobile phones by drivers**
- **Veh. ord. upheld; mobile phone ord. struck down**
- **Court analysis: Broad view of LG ordinance making powers (160A-4)**
 - 1. Towing practices of private businesses proper subject for use of police powers**
 - 2. No requirement to prove incidents happened or caused harm, only that the risk exist**
 - (a) Pre-emption; or**
 - (b) implied pre-emption**

FINDINGS TO SUPPORT EXERCISE OF POLICE POWERS:

- **Acknowledgement that long term health effects of exposure to 2nd hand vapors unknown but, evidence of toxic chemicals in 2 leading e-cigarette brands by USDFA**
- **Exhaling vapors releases measurable amounts of carcinogens and toxins into the air**
- **Battery explosions either during charging or while in use**

ORDINANCE AMENDMENT

Substantive Text

- **Section 11-31 amended to add “use of e-cigarettes” and other minor revisions to conform to state law and current city department make-up**
- **Section 11-32 amended to add definition for e-cigarette and excluding any vapor product regulated by USDFA**
- **Remaining Sections amended to add use of e-cigarettes” and other minor revisions to conform to state law**

Enforcement

- **To avoid confusion and provide for uniformity and consistency: same as enforcement for lighted cigarettes.**
- **Signs must be posted reflecting that e-cigarettes prohibited.**
(will need to locate the “no e-cigarettes” logo, if one to post signage)